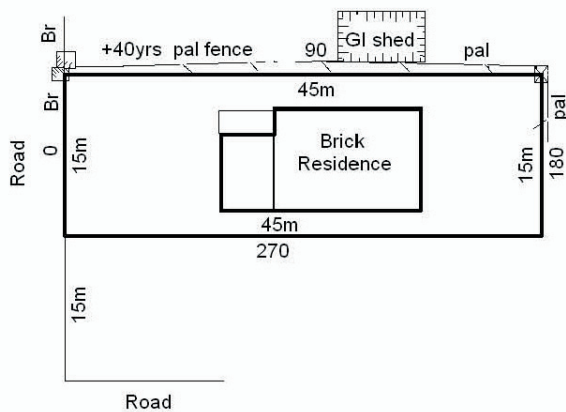




Principles of Re-establishment

Exercise 6

Determine Your Client's Needs



The survey showed fencing to be north of the re-established title position. The owner of the property objected to the new fence being erected on land she regarded as hers.

On the basis that a replacement fence should respect the possessory rights of owners, the surveyor negotiated a settlement whereby the new fence would be along the line connecting the join in the front brick fence to the post at the rear of the property.

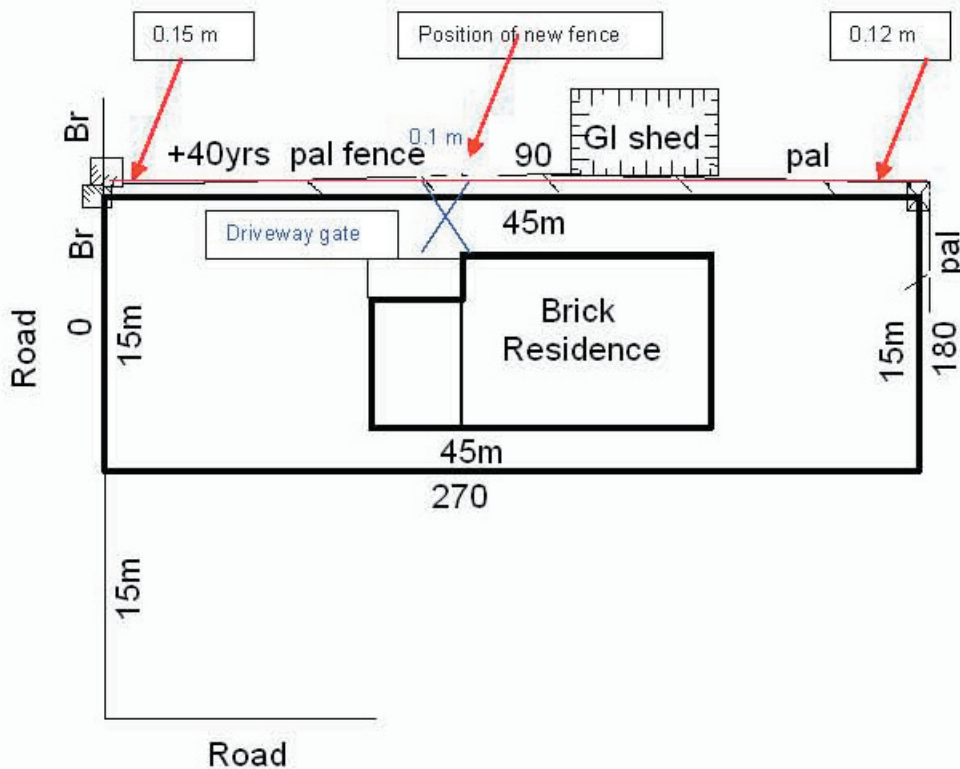
Question:

Where should the new fence be built?

Principles of Re-establishment

Exercise 6

Answer:



The fence was finished and the driveway gates were reinstalled. The only problem was that they would now not close. They overlapped by 10 centimetres.

The matter went before the courts on the basis that there was theft of land by deception and the owner of the southern property wanted her land back.

The final outcome was that the fence was pulled down and erected in the exact position of the old fence (as located by the surveyor in the first place), with costs in the order of \$50,000 awarded against the owner of the northern property.

The courts confirmed that a possessory title is more powerful than the dimensions shown on a Torrens Title if a boundary is bought before the courts for adjudication.

The Torrens Title (paper title) is there for the purposes of registration but a possessory title needs to be respected if the boundary is disputed.

When giving advice on boundaries be aware of all the physical features that might influence the outcome before giving any guidance on the matter. Try and understand what your client(s) are really after.